IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 16110 of 2004(P)

FINDINGS IN OS.406/2002 of MUNSIFF'S COURT, OTTAPPALAM

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PETITIONER:

P.J.MOOTHEDATH @ MOOTHEDATH JAYA SIMHAN,
S/O. MOOTHEDATH LATE PARAN, RESIDING AT
"PRIYADARSHINI",MUNDAMUKA AMSOM, NEDUNGOTTUR DESOM
OTTAPALAM TALUK.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:

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1. MUNDAN @ KUNHAN,
S/O. PANGYALATHODI KARAPPAN, MUNDAMUKA AMSOM DESOM
NEAR GOVT. HIGH SCHOOL, GANESHGIRI, SHORNUR,
OTTAPALAM TALUK.

2. KALI, W/O. MUNDAN @ KUNHAN, -DO- -DO-.

3. VISWANATHAN, S/O. -DO- -DO-.

4. UNNIKRISHNAN, S/O. -DO- -DO-.

5. KUTTAN @ BALASUBRAMANYAN,
S/O. -DO- -DO-.

BY ADV. SRI.M.V.HARIDAS MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.16110/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN O.S.406/02 DT.11.9.02

EXT.P2- TRUE COPY OF WRITTEN STATEMENT, DT.20.2.03.

EXT.P3 – TRUE COPY OF FINDINGS IN O.S.406/02 DT.2.8.03 OF MUNSIFF'S COURT, OTTAPALAM.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.16110 OF 2004

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DATED THIS THE 13TH SEPTEMBER, 2007

J U D G M E N T

Impugned in this Writ Petition is Ext.P3 order by which the learned Munsiff has referred the question whether the defendants are having kudiyayma right over the suit property to the Land Tribunal for adjudication under Section 125(3) of the Kerala Land Reforms Act. The order is challenged on various grounds. It is contended that the issue did not arise on the pleadings raised by the defendants.

2. Having regard to the submissions addressed at the Bar, I feel that the matter requires reconsideration in the light of the judicial precedents governing the point, particularly the judgment of the Full Bench of this Court in **Kesava Bhat v. Subraya Bhat** (1979 KLT 766). I set aside Ext.P3 and direct the learned Munsiff to take a fresh decision on the issue, taking into account the principles laid down by the Full Bench in **Kesava Bhat v. Subraya Bhat** (1979 KLT 766) and any other subsequent decision of the Supreme Court indicating that even in a suit for injunction, an issue can arise regarding the nature of the possession. Fresh decision as directed above will be taken by the

learned Munsiff at the earliest and at any rate within one month of receiving copy of this judgment.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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